Filed 12/22/08 In re Jacob L. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JACOB L. et al., Persons Coming Under the Juvenile Court Law.	B204795 (Los Angeles County Super. Ct. No. CK69603)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JEANNINE E., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Jeannine E. (Mother) appeals from a dispositional order of the dependency court. She challenges (1) the court's finding that the Indian Child Welfare Act (ICWA) does not apply, and (2) the court's reunification plan. We affirm.

FACTS

In August 2007, the Department of Children and Family Services (DCFS) received information that Mother physically abused her daughter R., born in 1998.[1] The referral disclosed that Mother became upset for no reason and hit R. in the mouth, cutting her lip. Mother also bruised R.'s ribs. During the incident, Mother's younger child J. (born in 2002) called his paternal grandmother (PGM) to say that R. "was being beaten up by mother."

The PGM called the police and asked them to check on the children's welfare. When confronted by investigating police officers and a DCFS social worker, Mother denied any abuse and suggested that R. hurt herself while playing in a swimming pool. During her interview, Mother experienced mood swings, acting calm one moment and the next moment screaming and acting irrationally. Mother informed the social worker that she has no American Indian heritage.

R. told the police that Mother punched her twice on the mouth with a closed fist after R. asked Mother for something to drink. Mother also struck R. numerous times on the rib cage with an open hand. J. confirmed that he witnessed Mother's attack on R. The officers could see that R. had suffered a cut lip and had bruising on her rib cage. R., then age eight, told the social worker she would prefer to live with the PGM. She admitted that she initially told the police that she was okay, because she did not know what Mother would do when the police departed. Mother calls R. "stupid" and pulls the child's hair. R. fears Mother and feels that Mother does not love her. As a result of the

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[1] Starting in 2003, DCFS received eight prior referrals for the family alleging physical, emotional or sexual abuse, or general neglect. All the referrals were deemed inconclusive or unfounded.

apparent abuse, Mother was arrested for cruelty to a child. DCFS detained the children and placed them with the PGM.

Mother was in the process of divorcing Ryan L. (Father). Although Mother had physical custody of the children, she arranged in March 2007 to have the children live with the paternal grandparents. Father took R. for medical treatment of the injuries inflicted by Mother.

A petition was filed on August 21, 2007. It alleged that Mother struck R. on the face and body, and pulled the child's hair, causing unreasonable pain and suffering, endangering her health and safety, and placing J. at risk of harm. It also alleged that Mother and Father have an extensive history of altercations that endanger the children. The court found a prima facie case for detaining the children. Mother was in custody and did not attend the hearing.

In a report for the jurisdictional hearing, DCFS recounted an interview with R., who told the social worker that Mother "is in jail because she beat me up with her hands. My mother's hand was closed and she punched me on my mouth and my whole body. When she hit me on my lip blood came out and I was crying. I don't know how many times she punched me. I just remember her punching me a lot of times." The beatings resulted in bruises on R.'s face and ribs. R. is afraid of Mother. J. informed the social worker during his interview that Mother hit R. on the face. J. told Mother to stop hitting R., but "My mom did not stop hitting [R.] I got scared and called my nana and told her that my mom was hitting my sister." Father took photographs of R.'s injuries. Mother denied abusing R. R. indicated that "I don't want to see or live with mother. I'm afraid of her and I don't want to talk to her." J. said, "I just want to live with my Nana."

Shortly before the hearing, DCFS supplied the court with "Last Minute Information." Part of the information was that PGM said that her grandmother was from the Yaqui tribe, but PGM did not know if her grandmother was registered. The paternal grandfather "also stated that his family is American Indian. However, he does not have any information with regards to family members." Father signed a statement indicating that he has no Indian ancestry, as far as he knew.

At a hearing on September 11, 2007, the court addressed the issue of the ICWA. The court stated, "ICWA. The father has indicated no American Indian heritage. A report from the department indicated that the paternal grandparents both indicated that there was American Indian heritage. When I asked them today—they're both in court; [the paternal grandparents] both indicated no; that there was some sort of a history. They weren't sure what and they weren't sure who. And so, at this point, I'm going to make the finding this is a non-ICWA case on behalf of the father. The mother is indicating she has American Indian heritage?" Mother's counsel stated "Navajo and Cherokee." When asked whether she was currently enrolled in a tribe, Mother's counsel said, "Mother doesn't believe she's eligible. Mother's indicating she has no American Indian heritage." The court responded, "She what?" Counsel said, "There is no Native American heritage." The court repeated, "No Native American heritage. Thank you. That's a no." The court gave Mother no visitation while she was in custody; if she was released, she could have one monitored visit per week.

On October 15, 2007, DCFS reported that Mother's competence to stand trial in the criminal case was being questioned. Two evaluations were performed: the first evaluation showed that Mother was competent, and the second found Mother incompetent. A third mental evaluation was going to be performed on Mother. If Mother was found competent, her trial was scheduled for November 5, 2007.

A jurisdictional/dispositional hearing was conducted on October 22, 2007. The court sustained allegations that (1) Mother physically abused R. by striking the child in the mouth and ribs; and by pulling her hair and striking her body, causing unreasonable pain and suffering; (2) Father failed to protect R. from the abuse; and (3) Mother's physical abuse of R. places the child's sibling J. at risk of harm. The court declared the children to be dependents of the juvenile court.

Moving to disposition, the court removed the children from parental custody and placed custody with DCFS. They were placed with the paternal grandparents. The court ordered Mother to participate in a domestic violence batterer's treatment intervention program and a parenting class, to which Mother said, "No problem." The court ordered

twice weekly monitored visitation for Mother "when she gets out of custody." The court observed that there is a protective order in place covering the children, pending the criminal trial. The court said, "So, if Mother wants to do something about this restraining order, she must go back into criminal court and do it." The court added, "I cannot do anything about visitation between the mother and the children until there is a change" in the criminal protective order.

DISCUSSION

1. ICWA Notice

Mother contends that DCFS and the court failed to comply with the ICWA notice requirements "even though both were on notice the children may have American Indian heritage." At the hearing on the ICWA issue, the parental grandparents (who were in court) disclaimed American Indian heritage. Father disclaimed American Indian heritage. And while Mother initially mentioned two tribes, she later disclaimed American Indian heritage.

The juvenile court must give notice to affected tribes under the ICWA if the court "knows or has reason to know that an Indian child is involved . . . ." (25 U.S.C. § 1912(a); *In re I.G.* (2005) 133 Cal.App.4th 1246, 1251.) Only a minimal showing is required to trigger the need for statutory notice: a "hint" may suffice. (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 549.) In this instance, the hints initially made by Mother and her parents suggesting the possibility of American Indian heritage were disclaimed at the hearing during questioning by the court. Given these express disclaimers, the court did not know or have reason to believe the children may have American Indian heritage. In this appeal, Mother does not claim that there is any further proof of American Indian heritage that the dependency court has overlooked. Accordingly, no notice is required under the ICWA.

2. Reunification Plan

The court may make orders designed to eliminate the conditions that brought the children to the court's attention. (Welf. & Inst. Code, § 362, subd. (c); *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180.) A reunification plan must be appropriate to the

individual and to the facts of the case. (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458; *In re Edward C.* (1981) 126 Cal.App.3d 193, 205.) If a parent is incarcerated, the court must order reasonable services—such as visitation—unless those services would be detrimental to the child. (Welf. & Inst. Code, § 361.5, subd. (e)(1).)

Mother asserts that the court did not make a reasonable reunification plan because it (a) failed to provide for visitation with the children while Mother was incarcerated and (b) ordered Mother to participate in a certified domestic violence batters' treatment program and a parenting program during her incarceration. However, Mother never objected to the reunification plan ordered by the court. By failing to object, she has waived her right to object on appeal to the plan that was ordered. "As a general rule, a party is precluded from urging on appeal any point not raised in the trial court. [Citation.] Any other rule would '"'permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.'"'" (*In re Riva M.* (1991) 235 Cal.App.3d 403, 411-412.)

In any event, Mother's arguments are unavailing. The court was given a copy of a criminal protective order which, as Mother stated at the hearing, was in place pending her trial on charges of cruelty to a child. After examining the protective order, the court concluded that it "cannot do anything about any current restraining order that's in full force and effect." Mother now claims that there is no evidence of any criminal protective order that would limit her right to visitation.

Mother cannot acquiesce in the court's reading of the protective order during the hearing, then appeal the court's refusal to allow visitation during her incarceration. Obviously, the protective order applied to Mother: she is the only person in this dependency proceeding who faced criminal charges. If the protective order contradicted the court's reunification order, it was Mother's duty to point that out to the dependency court, and then to augment the record on appeal to include the protective order, because we may take judicial notice of the records in Mother's criminal proceeding. (Evid. Code,

§ 452, subd. (d).) Mother failed to do so. As a result, we must presume that the protective order did, in fact, preclude the dependency court from ordering visitation. If Mother wants visitation during incarceration, she must have the protective order lifted.

An incarcerated parent may be required to attend counseling and parenting classes if such programs are available. (Welf. & Inst. Code, § 361.5, subd. (e)(1)(D).) With respect to her court-ordered programs, Mother asks us to take judicial notice of a recent dependency court order finding that she has completed a parenting program. Thus, Mother's brief arguing that such a program is not available to her in prison is moot. There is a program, and she completed it.

Mother continues to argue that there is no evidence she can take a batterer's program in prison. If Mother wishes to argue that there is no batterer's program in prison—something she did not argue to the dependency court—she needs to bring a motion under Welfare and Institutions Code section 388 to modify the court-ordered plan, thereby allowing the dependency court to consider the evidence relating to this issue. Certainly, a batterer's program for Mother is crucial, given the sustained allegations that Mother battered her eight-year-old daughter, in the presence of her five-year-old son.

DISPOSITION

The judgment (dispositional order) is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J. CHAVEZ, J.